

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROBERT REGINALD COMENOUT SR.,
EDWARD AMOS COMENOUT III, THE
ESTATE OF EDWARD AMOS
COMENOUT JR., ROBERT REGINALD
COMENOUT JR., MARLENE
COMENOUT and LEE A. COMENOUT
SR.,

CASE NO. 3:16-cv-05464-RJB

**ORDER DENYING THE STATE
DEFENDANTS' MOTION FOR
SANCTIONS**

Plaintiffs.

V.

J. MARK KELLER, et al.,

Defendants

BEFORE THE COURT is the State Defendants' Motion for Sanctions. Dkt. 49. The Court has considered pleadings filed in favor of and against the motion and the remainder of the file herein.

The Court recited the procedural posture of the case in its Order on Plaintiffs' Motion for Leave to File Third Amended Complaint (Dkt. 63), which should be incorporated herein.

The State Defendants seek sanctions against Plaintiffs for filing the Motion for Leave to File Third Amended Complaint (Dkt. 46). The State Defendants argue that the Third Amended

1 Complaint relitigates issues already decided in this and other cases, harasses the State
2 Defendants, and fails to correct defects that the State Defendants identified to Plaintiffs by letter.
3 “Filing a complaint in federal court is no trifling undertaking.” *Christian v. Mattel, Inc.*,
4 286 F.3d 1118, 1127 (9th Cir. 2002). Instead, by filing a pleading, an attorney “is certifying” that,
5 to the best of that person’s belief, and formed after a reasonable inquiry:

- 6 (1) [the pleading] is not being presented for any improper purpose, such as to harass, cause
unnecessary delay, or needlessly increase the cost of litigation;
- 7 (2) the claims, defenses, and other legal contentions are warranted by existing law or by a
nonfrivolous argument for extending, modifying, or reversing existing law or for
establishing new law;
- 8 (3) the factual contentions have evidentiary support or, if specifically so identified, will
likely have evidentiary support after a reasonable opportunity for further investigation or
discovery; and
- 9 (4) the denials of factual contentions are warranted on the evidence or, if specifically so
identified, are reasonably based on belief or a lack of information.

10 Fed. R. Civ. P. 11(b). When the complaint is the focus of the Rule 11 inquiry, courts must
11 determine, “(1) whether the complaint is legally or factually baseless from an objective
12 perspective, and (2) if the attorney has conducted a reasonable and competent inquiry before
13 signing and filing it.” *Id.* quoting *Buster v. Greisen*, 104 F.3d 1186, 1190 (9th Cir. 1997) (internal
14 quotations omitted).

15 *1. Legally/factually baseless?*

16 The Third Amended Complaint does contain some allegations that lack support under the
17 law. For example, attempting to challenge the constitutionality of Washington’s tax on cigarettes
18 sold by Indian retailers to non-Indian purchasers is without merit, because the issue is well-
19 settled. *Confederated Tribes & Bands of the Yakama Indian Nation v. Gregoire*, 658 F.3d 1078
20 (9th Cir. 2011). Nonetheless, other allegations may be warranted by gray areas in existing law or
21 include nonfrivolous arguments.

2. Reasonable and competent inquiry?

From the procedural history, including Plaintiffs' withdrawal of a prior iteration of the complaint, Plaintiffs' attorneys obviously put considerable work and study into their Third Amended Complaint. The Court cannot say that their attempts and inquiry, though unsuccessful, were not reasonable and competent.

Therefore, the State Defendants' Motion for Sanctions should be denied.

* * *

The State Defendants' Motion for Sanctions (Dkt. 49) is HEREBY DENIED.

IT IS SO ORDERED.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

Dated this 29th day of March, 2017.

Robert J. Bryan

ROBERT J. BRYAN
United States District Judge